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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,815	08/29/2003	Douglas A. Bulleit	9400-65	2478

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MYERS BIGEL SIBLEY & SAJOVEC, P.A.
P.O. BOX 37428
RALEIGH, NC 27627

EXAMINER

CHAMPAGNE, LUNA

ART UNIT	PAPER NUMBER
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3627

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/652,815	Applicant(s) BULLEIT ET AL.	
	Examiner Luna Champagne	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/6/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 recites the limitation "the request is first request" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Roden (5,970,477).

Re claims 1, 13, 17 and 29 Roden teaches a method/system of operating a broadband communication network, comprising: establishing a communication flow between a network access terminal and a site using the broadband communication network (*providing an originating station with access to a distributed computing network -see e.g. col. 4, lines 61-64*); and allocating a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal (*A billing system allocates a cost*

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associated with the communication between a first account associated with the monitored network site and a second account associated with the originating station - see e.g. col. 6, lines 19-25).

Re claims 2, 14, 18, and 30, Roden teaches a method/system wherein allocating the cost of the communication flow comprises: allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with the entity other than the user of the network access terminal based on a performance level of the communication flow (see e.g. col. 5, lines 10-13).

Re claims 4, 20, and 32, Roden teaches a method/system further comprising: receiving a request from the network access terminal and/or the site to provide the communication flow at the enhanced performance level; and providing the communication flow at the enhanced performance level (see e.g. col. 4, lines 64-67; col. 5, lines 1-5).

Re claims 5, 21, and 33, Roden teaches a method/system wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises: *(\$5 per month, plus 5 cents*

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per minute - see e.g. col. 5, lines 11-13) allocating the base cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal; and allocating the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal (*see e.g. col. 9, lines 50-52*).

Re claims 6, 22, and 34, Roden teaches a method/system wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises: allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal.

Re claims 7, 23, and 35, Roden teaches a method/system wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises: (*see e.g. col. 5, lines 11-13*) allocating the base cost and the incremental cost of the communication flow between

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the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal see *e.g. col. 8, lines 48-49*).

Re claims 8, 24, and 36 Roden teaches a method/system further comprising: using an authentication mechanism to verify that the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow (see *e.g. col. 10, lines 61-67; col. 11, lines 1-9*).

Re claims 9, 25, and 37, Roden teaches a method/system wherein the request is a first request, the method further comprising: receiving a second request from the network access terminal and/or the site to provide the communication flow at the base performance level; and wherein allocating the cost of the communication flow comprises: allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with at the entity other than the user of the network access terminal based on the performance level of the communication flow if the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow (see *e.g. col. 5, lines 42-60*).

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Re claims 10, 16, 26, and 38, Roden teaches a method/system wherein the performance level is based on at least one of bandwidth of the communication flow, duration of the communication flow, latency associated with the communication flow, jitter associated with the communication flow, dropped packets associated with the communication flow, quality of service (QoS) associated with the communication flow, rate limit associated with the communication flow, traffic shaping associated with the communication flow, and priority of the communication flow (*The allocation is based on the duration of the communication - see e.g. col. 5, lines 10-13*).

Re claims 11, 27, and 39, Roden teaches a method/system, wherein the entity is associated with the site (*see e.g. col. 4, lines 21-23*).

Re claims 12, 28, and 40, Roden teaches a method/system wherein the entity is associated with a third party that is not associated with the site (*see e.g. col.9, lines 57-61*).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 15, 19, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roden (5,970,477), in view of Kung et al. (6,775,267 B1).

Re claims 3, 15, 19, and 31, Roden teaches a method wherein allocating the cost of the communication flow comprises: allocating the cost of the communication flow between the first account and the second account

Roden does not specifically teach allocating the cost based on whether the communication flow is at a base performance level or an enhanced performance level that exceeds the base performance level

However, Kung et al. teach allocating the cost based on whether the communication flow is at a base performance level (*default quality of service*) or an enhanced performance level that exceeds the base performance level (*required bit rate*) (see e.g. col. 2, lines 50-52).

Therefore, it would have been obvious, at the time of the invention, to a person of ordinary skill in the art to modify Roden, and include the steps of allocating the cost based on base performance level or an enhanced performance level that exceeds the base performance level, as taught by Kung et al., in order to control costs for the communication network.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fan (US 2003/0079021 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luna Champagne whose telephone number is (571) 272-7177. The examiner can normally be reached on Monday - Friday 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Luna Champagne
Examiner
Art Unit 3627

6/25/07

 6/27/07
F. RYAN ZEENDER
PRIMARY EXAMINER